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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

RENA JONES, Plaintiff and Respondent, v. CHARLENE REMARK-ARIPEZ, as Trustee, etc., Defendant and Appellant.	B289860 (Los Angeles County Super. Ct. No. 17STPB04837)

APPEAL from an order of the Superior Court of Los Angeles County. Brenda Penny, Temporary Judge (see Cal. Const., art. VI, § 21). Affirmed.

James E. Foden for Defendant and Appellant.

Pettler & Miller, Mark. A Miller and Matthew S. Palmer for Plaintiff and Respondent.

Appellant Charlene Remark-Aripez appeals the trial court's order that she hold a gift of real property in trust. The grantor gave Remark-Aripez the property "to use in [her] discretion for the benefit of all beneficiaries" of his living trust. Remark-Aripez contends this language is precatory and imposed on her only a non-binding moral obligation to use the property for the benefit of the other beneficiaries. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Frederick Remark executed a living trust (the Trust) on October 15, 2003, which names Remark-Aripez as successor trustee. The trust estate consists of real property located at 1024 Mahar Avenue (the Property), a checking account, and a savings account.

The Trust provides that, upon Frederick's death, its assets are to be distributed as specified in a Schedule of Beneficiaries. The schedule lists eight beneficiaries, all of whom are either Frederick's issue or children of his deceased wife. Directly across from each name is a description of property given to that beneficiary.

The schedule indicates that Rena Jones, Remark-Aripez, and four other beneficiaries are to each receive "1/6 percent of all active checking and saving accounts." The two remaining beneficiaries are to receive either nothing[1] or one dollar.

Remark-Aripez is the only beneficiary given additional property. Across from her name, the schedule lists: "Real property located at 1024 Mahar Avenue . . . to use in this beneficiaries' [*sic*] discretion for the benefit of all beneficiaries."

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[1] The schedule notes the beneficiary who will receive nothing "has received in excess of her portion of inheritance during the lifetime of Grantor."

It also lists: "All personal property . . . which are to be distributed among the beneficiaries at this beneficiaries [*sic*] discretion."

Frederick died on October 23, 2014. After Remark-Aripez indicated her intention to distribute the Property to herself, free of trust, Jones filed a petition in superior court for interpretation of the Trust. Jones argued the Property was given to Remark-Aripez "for the benefit of all beneficiaries," which mandates that all beneficiaries receive an equal value of the Property, whether it is rented, sold, or made productive in some other way. Jones also sought an order requiring Remark-Aripez to sell or rent the Property and distribute the proceeds to the beneficiaries.

Remark responded that the Property should be distributed to her outright because it was given to her in her capacity as a beneficiary and did not specify that it was to be held in trust. She also argued the language giving her the Property imposed on her only a non-binding moral duty to use it for the benefit of the other beneficiaries.

The court granted Jones's requested relief. Remark-Aripez timely appealed.

DISCUSSION

Remark-Aripez contends the language in the Schedule of Beneficiaries conveyed to her an outright gift of the Property, free of trust. She insists the phrase, "to use in this beneficiaries' [*sic*] discretion for the benefit of all beneficiaries" is precatory language[2] that imposes on her nothing more than a moral

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[2] "Precatory words are expressions by a settlor of desire, wish, recommendation, assurance, request, or the like." (60 Cal. Jur. 3d Trusts § 20; see *Estate of Farelly* (1931) 214 Cal. 199, 204 ["The expression of a desire, wish, recommendation, assurance,

obligation. Jones, in turn, argues the language mandates Remark-Aripez hold the Property in trust for the benefit of all beneficiaries. We agree with Jones's interpretation.[3]

" 'In construing trust instruments, as in the construction and interpretation of all documents, the duty of the court is to first ascertain and then, if possible, give effect to the intent of the maker.' [Citations.]" (*Gardenhire v. Superior Court* (2005) 127 Cal.App.4th 882, 888.) "The interpretation of a will or trust instrument presents a question of law unless interpretation turns on the credibility of extrinsic evidence or a conflict therein." (*Burch v. George* (1994) 7 Cal.4th 246, 254.) We review legal questions de novo. (*Citizens Business Bank v. Carrano* (2010) 189 Cal.App.4th 1200, 1205 [de novo review when interpretation of a trust does not require court to resolve conflicts in the evidence]; *McKenzie v. Vanderpoel* (2007) 151 Cal.App.4th 1442, 1450.)

"A trust is any arrangement which exists whereby property is transferred with an intention that it be held and administered by the transferee (trustee) for the benefit of another." (*Eggert v. Pacific States Savings & Loan Co.* (1943) 57 Cal.App.2d 239, 243; accord *Higgins v. Higgins* (2017) 11 Cal.App.5th 648, 661.)

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request, etc., is *prima facie* precatory in character."]; Black's Law Dictionary (10th ed. 2014) [defining precatory words as "requesting, recommending, or expressing a desire rather than a command"].)

[3] Remark-Aripez does not directly challenge the specifics of the court's order. We limit our review, therefore, to the question of whether Frederick intended to give Remark-Aripez the Property to hold in trust.

"Whether a direct bequest or a trust has been created by the provisions of a will is entirely a question of the intention of the testator as derived from the language used; no particular words or phrases are necessary for the creation of a trust."[4] (*Estate of Bunn* (1949) 33 Cal.2d 897, 900.) "If the testator accompanies his bequest with a desire on his part that it shall be applied in a certain way, or for the benefit of another than the legatee, either by coupling the same as a directing clause in the sentence by which the bequest is made, or by specific reference thereto, there is a clear manifestation that it was his intention that such disposition should be made of the property given to the legatee. In such a case a duty or obligation towards the other is imposed upon the legatee as a consideration for the gift. His acceptance of the property is upon the condition that he will comply with the direction or request of the testator, and he will be held as a trustee for that purpose." (*Estate of Marti* (1901) 132 Cal. 666, 670 (*Estate of Marti*).)

The question of whether the grantor intended to create a trust becomes more complicated when the instrument uses precatory language rather than explicit commands. Whether such words create a trust depends on the context in which they are used. (*Estate of Marti, supra*, 132 Cal. at p. 669.) When precatory words are used in direct reference to the estate or directed at the trustee or executor, courts generally interpret them as imperative commands that create a trust. (*Estate of*

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[4] The Probate Code applies the same general rules of interpretation to wills and trusts. (See Prob. Code, §§ 21101, 21102.) Accordingly, we may look to authority concerning the interpretation of wills to aid us in interpreting the Trust.

Lawrence (1941) 17 Cal.2d 1, 7; *Estate of Collias* (1951) 37 Cal.2d 587, 589–590 (*Estate of Collias*); *Estate of Kearns* (1950) 36 Cal.2d 531, 534–535; *Estate of Moore* (1967) 253 Cal.App.2d 945, 949–50.) Courts are less likely to find a trust is created if the words are directed at a beneficiary, even if the beneficiary is also the trustee or executor.[5] (*Ibid*.)

In *Estate of Marti*, the decedent's will gave to his wife " 'all the other property, real and personal, and wherever situated, of which I may die possessed.' " (*Estate of Marti, supra*, 132 Cal. at p. 667.) In a separate paragraph, the will provided: " 'Upon the death of my wife, I desire that one half of the property bequeathed to her shall be devised by her to my relatives.' " (*Id*. at p. 668.) The decedent's relatives argued the latter provision made the wife a trustee of one half the residue of the estate. The California Supreme Court disagreed, holding the property passed to the wife without restriction. The court explained that the provision giving the wife the residue of the estate was explicit and without any limitation or qualification. (*Id*. at p. 672.) The provision related to the relatives did not restrict that gift because it appeared in a separate paragraph, and the " 'words themselves fall far short of a command or a direction, and are rather in the nature of an expression of the testator's feelings, and a suggestion or recommendation to be considered by her in making a testamentary disposition of her estate, or as a reason to influence her therein.' " (*Id*. at p. 671.)

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[5] We agree with Remark-Aripez that the relevant language in the Schedule of Beneficiaries was directed at her in her capacity as a beneficiary, and not in her capacity as trustee of the Trust.

The court came to the same conclusion in *Estate of Collias*, *supra*, 37 Cal.2d 587. In that case, the testator's will bequeathed "outright and unconditionally" all the residue of the estate to his nephew. (*Id*. at pp. 588, 590.) In the subsequent sentence, the will provided, " 'It is my desire and wish that my nephew . . . will give half of my estate to my nearest relative heir in Greece . . . .' " (*Id*. at p. 588.) The court held this language did not create a trust, noting "[i]t is apparent from these provisions that the testator's 'desire and wish' concerning his relative in Greece is 'not equally clear and distinct' as the provision preceding it." (*Id*. at p. 590.)

The court held the opposite in *Estate of Hamilton* (1919) 181 Cal. 758 (*Estate of Hamilton*). In that case, the decedent's will gave the residue of his estate " 'to the Right Reverend William J. Walsh, Archbishop of Dublin, Ireland, and I request that masses be offered.' " (*Id*. at p. 761.) The trial court determined the gift was made to the archbishop in his individual capacity and free of trust. The California Supreme Court reversed, explaining the gift and request for its disposition were coupled together in the same sentence, which provided "cogent and compelling" evidence that the testator intended to create a trust. (*Id*. at p. 767.)

Here, the language gifting the Property to Remark-Aripez evidences a clear intention to create a trust. Unlike in *Estate of Marti* and *Estate of Collias*, all of the relevant language is contained within a single sentence. That sentence consists of a simple description of the Property, followed by the statement "to be used in this beneficiaries' [*sic*] discretion for the benefit of all beneficiaries." That the description of the gift is directly coupled with quintessential trust language—"for the benefit of all

beneficiaries"—provides "cogent and compelling" evidence that Frederick intended the Property be held in trust. (*Estate of Hamilton, supra,* 181 Cal. at p. 767.)

Moreover, unlike the provisions at issue in *Estate of Marti* and *Estate of Collias*, there is no precatory language that would indicate Frederick merely hoped, desired, or wished that Remark-Aripez would hold the Property for the stated purpose. Instead, the language describing the gift's purpose is direct and assertive. It is clear, therefore, that Frederick intended to impose an imperative obligation on Remark-Aripez to hold the Property for the benefit of all the beneficiaries. (See *Estate of Hamilton, supra*, 181 Cal. at p. 767; *Estate of Heil* (1989) 210 Cal.App.3d 1503, 1506 [finding "no doubt" that a trust was intended by a provision directing the residue of the testator's estate be " 'given to the State of Nevada for the preservation of the wild horses in Nevada' "].)

Remark-Aripez contends that had Frederick wanted to ensure all the beneficiaries benefited from the Property, he would have divided it the same way he divided the other Trust assets, by giving each beneficiary a proportionate share. Those other assets, however, were checking and savings accounts, which are relatively simple to divide. In contrast, dividing real property amongst numerous beneficiaries presents many practical difficulties, especially if the beneficiaries disagree about how to use the property. It is reasonable, therefore, that Frederick chose to treat the Property differently by giving it to a single beneficiary to hold in trust for the benefit of the others. It also makes sense that he chose Remark-Aripez for that role, since he also chose her to be successor trustee of his personal trust.

Remark-Aripez further contends the fact that she was given the Property "to use in [her] discretion" demonstrates that Fredrick intended it to be an absolute gift. In support, she points to cases in which courts have noted that a trust can only be created if the beneficiary has no discretion to ignore the grantor's direction. In *Estate of Marti*, for example, the Supreme Court explained that to create a trust, "it must appear that the testator intended to impose an imperative obligation upon [the beneficiary], and for that purpose has used words which exclude the exercise of discretion or option in reference to the act in question." (*Estate of Marti, supra*, 132 Cal. at p. 669; see *Estate of Duncan* (1956) 145 Cal.App.2d 612, 614–615 ["precatory words in a will suffice to create a binding trust only when it clearly appears that the testator intends to impose an imperative obligation and to exclude the exercise of discretion by the person to whom they are addressed"].)

There is no question the language in the Schedule of Beneficiaries gives Remark-Aripez some discretion. That discretion, however, relates only to the manner in which the Property is used; it does not extend to the purpose for which the Property is held. On the latter point, the Trust plainly directs, without any discretion or option to ignore, the Property be held "for the benefit of all beneficiaries." It is the purpose for which the Property is held, and not the specific use to which it is put, that determines whether it is held in trust. (See *Estate of Hamilton, supra*, 181 Cal. at p. 764 ["The essential element of a trust [is] that the subject matter of the trust—the money or the property—be held by the trustee for someone else, or be used for the accomplishment of some object or objects other than the personal benefit of the trustee"].) Moreover, the fact that the

language grants Remark-Aripez discretion to decide how to use the Property is not inconsistent with an intention to create a trust. The grant of such discretion is a common feature of trusts, including the underlying living trust at issue in this case.

DISPOSITION

The order is affirmed. Respondent is awarded costs on appeal.

BIGELOW, P. J.

We concur:

GRIMES, J.

WILEY, J.